

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF REDMOND**

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4 **IN THE MATTER OF APPLICATION OF )**  
5 **T-MOBILE FOR A WIRELESS )**  
6 **TELECOMMUNICATIONS MONOPOLE )**  
7 \_\_\_\_\_ )

**FILE NO: CUP 02-001**

**AMENDED RECOMMENDATION**

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10 **RECOMMENDATION**

11  
12 The Hearing Examiner **RECOMMENDS** that the application of T-Mobile for a Conditional Use  
13 Permit to construct a **64**-foot monopole on the NW corner of Redmond Way and 140<sup>th</sup> Avenue  
14 NE be **APPROVED**, subject to conditions.

15 **INTRODUCTION**

16  
17 The application of T-Mobile (Applicant) for a Conditional Use Permit to install a  
18 telecommunications monopole and associated ground-mounted equipment at NE Redmond Way  
19 and 140<sup>th</sup> Avenue NE came on for hearing before Gordon F. Crandall, Hearing Examiner, on  
20 April 24, 2003 at 7:00PM. The Technical Committee Report was presented by Dana Farwell,  
21 planner. Testifying under oath for Applicant were:

22 Craig Walkenhorst, SecuraSite LLC

23 Joe Tseng, RF Engineer

24 Also testifying under oath were:

25 Neelesh Kamkolkar, 13945 Redmond Way

26 Yuri Alkin, 8420 143<sup>rd</sup> Ct NE

27 Johnny Baginley Jr., 13940 Redmond Way

28 Paul Smith, 13929 Redmond Way

29 Ron Mebust, 8225 140<sup>th</sup> Avenue NE

30 Akila Ramani, 14116 NE 85<sup>th</sup> Ct

Anna Dayen, 8420 143<sup>rd</sup> Ct NE

**Amended Recommendation**  
**T-Mobile Redmond Way Monopole- 1 of 11**  
**6/26/2003**

**City of Redmond**  
**Office of the Hearing Examiner**  
**P.O. Box 97010**  
**Redmond, WA 98073-9710**

1 The following exhibits were offered and admitted:

2 Exhibit A: Technical Committee Report dated April 24, 2003 with Attachments

3 Exhibit B: Schematics, Elevations, and Structural Drawings Submitted by T-Mobile

4 Exhibit C: Peer Review Email from Joe Blaschka, Jr. P.E. of ADCOMM Engineering

5  
6 The hearing adjourned after 9:00PM and was continued to Monday, April 28<sup>th</sup> 2003, at 7:00PM.

7  
8 Testifying under oath on that date for Applicant were:

9 Joe Tseng, RF Engineer

10 Chris Arena, Project Manager

11 Mike Roy, RF Engineer

12 Craig Walkenhorst, SecuraSite LLC

13 Also testifying under oath were:

14 Dana Farwell, planner

15 Judd Black, Development Review Manager

16 Yuri Alkin, 8420 143<sup>rd</sup> Ct NE

17 Neelesh Kamkolkar, 13945 Redmond Way

18 Johnny Baginley Jr., 13940 Redmond Way

19 Sharon Nakamura, 4930 26<sup>th</sup> South, Seattle

20 Andy Teng, 14203 NE 86<sup>th</sup> Place

21 Marc Quintal, 13939 Redmond Way

22 Christine Chen, 8428 143<sup>rd</sup> Ct NE

23 Anna Dayen, 8420 143<sup>rd</sup> Ct NE

24 Dave Gann, 14106 NE 84<sup>th</sup> Street

25  
26 The following exhibits were offered and admitted;

27 Exhibit D: Affidavit of Qualification and Certification for T-Mobile Facility from  
28 Hatfield & Dawson Consulting Engineers, dated April 24, 2003

29 Exhibit E: Brochure 'Questions about Wireless Antennas'

30 Exhibit F: Report on 'Frequently Asked Questions' submitted by T-Mobile

- 1 Exhibit G: Map of Drive Test Data Depicting Gaps in Coverage in Redmond  
2 Exhibit H: Memo from Mike Roy, T-Mobile Explaining the Need for a new Cell-Site,  
3 dated April 28, 2003  
4 Exhibit I: Memo from Dana Farwell, Planner, Answering Queries from Citizens  
5 from April 24, 2003 Hearing, dated April 28, 2003  
6 Exhibit J: Petition Presented by Concerned Citizens re: Proposed T-Mobile Project  
7 Exhibit K: Notice of Final Decision on T-Mobile's Application  
8 Exhibit L: Paper on 'Biological Effects of Radiofrequency Radiation from Wireless  
9 Transmission Towers' by Henry Lai  
10 Exhibit M: Request to Reject Application Submitted by Neighbors  
11 Exhibit N: Letter from Neelesh Kamkolkar, dated April 28, 2003  
12 Exhibit O: Letter from Meera Krishna, dated April 28, 2003  
13 Exhibit P: Letter from Meera Krishna, dated April 28, 2003  
14 Exhibit Q: Article from The Business Journal, dated January 28, 2003  
15 Exhibit R: Paper by R Santini on 'Study of the Health of People Living in the  
16 Vicinity of Mobile Phone Base Stations'  
17 Exhibit S: Letter from Qiang Wang, dated April 28, 2003  
18 Exhibit T: Letter from Anna Dayen, dated April 28, 2003  
19 Exhibit U: Letter from Dave Gann, dated April 28, 2003  
20 Exhibit V: Collection of Emails Submitted by Dana Farwell, Planner  
21 Exhibit W: Staff Powerpoint Presentation  
22 Exhibit X: Response Memo to Hearing Examiner from Dana Farwell, re:  
23 'Demonstration of Need', dated May 12, 2003  
24 Exhibit Y: Response Memo to Hearing Examiner from T-Mobile dated May 30, 2003  
25

26 At the conclusion of the hearing, Judd Black, Development Review Manager, requested a  
27 continuance in order to do further research to determine whether Applicant had demonstrated a  
28 need for a pole at this location. The Hearing Examiner granted the City two weeks to report its  
29 findings. On May 12, 2003, Dana Farwell, planner, reported the results of the City's research.  
30 She advised that the Federal Communications Commission (FCC) did not have any standards or

1 criteria that defined the need for a monopole and leaves the question to the local jurisdiction. The  
2 FCC does have strict regulations protecting the rights of cellular carriers that provide that a City  
3 cannot bar a carrier from providing service.

4  
5 Ms. Farwell contends that “need” should be demonstrated not only through gaps in coverage but  
6 also through a separate showing of a demand for services. She asked that Applicant provide not  
7 only RF reports but also drive tests, a list or summary of service complaints, proof of the  
8 percentage of dropped calls and other evidence to show a need for the monopole. She concluded  
9 that applicant had not shown that the monopole was “absolutely necessary” in this location to  
10 meet the demands of its users. She asked permission to reconsider the City’s recommendation if  
11 need cannot be demonstrated.

12  
13 T-Mobile USA responded to her City’s memoranda on May 30, 2003. In it’s memorandum, T-  
14 Mobile made the following points:

- 15  
16 1. The Decision Criteria in the RCDG does not require proof that a monopole is “absolutely  
17 necessary”, and such a standard here would be discriminatory.
- 18 2. The City’s memorandum ignored the results of the peer review requested by the City  
19 which supported Applicant’s position on need.
- 20 3. Reliance upon alleged health concerns from radio emissions was misplaced, as the  
21 Telecommunications Act prohibits the City from regulating the placement of personal  
22 wireless service facility on the basis of the environmental effects of radio frequency  
23 emissions if such facilities comply with the FCC’s regulations concerning emissions. 47  
24 U.S.C. § 332
- 25 4. T-Mobiles’ evidence of need for the facility included drive tests by T-Mobile, drive test  
26 analysis of Telephia (which is equipped with drive tests and equipment pertaining to  
27 numerous carriers and publishes comparative data) and propagation studies indicating  
28 gaps in coverage. There was no credible, science-based evidence to the contrary.
- 29 5. The Hearing Examiner should rely upon evidence in the record that is reliable, relevant  
30 and of probative value.

1 T-Mobile asked that the Hearing Examiner render a decision that applies the applicable  
2 decision criteria and reject the “absolutely necessary” standard urged by the City.  
3 The record was then closed.

4  
5 From the foregoing the Hearing Examiner makes the following:

6  
7 **FINDINGS OF FACT**  
8

- 9 1. *Proposal.* T-Mobile proposes to install a telecommunications monopole with associated  
10 ground equipment in the right-of-way on the NW corner of NE Redmond Way and 140<sup>th</sup>  
11 Avenue NE. The proposed antenna would be located within a canister on top of a wooden  
12 pole for a total height of 64 feet. All cables and wires would be contained within the  
13 hollow laminated pole. Landscaping and fencing would screen the ground-related  
14 equipment **and the base of the monopole.** The proposal requires a Conditional Use  
15 Permit.  
16  
17 2. *Neighborhood/Zoning.* The site is in the Rose Hill Neighborhood and adjacent properties  
18 are zoned R-4. All uses in the vicinity are single-family residential or vacant City  
19 property.  
20  
21 3. *Public Notice.* Public notice of the application for a Conditional Use Permit and the  
22 public hearing was given as required by ordinance.  
23  
24 4. It was established by the propagation studies, ground tests, and customer complaints that  
25 there is a gap in coverage along NE Redmond Way and 140<sup>th</sup> NE, and that an additional  
26 wireless telecommunications facility is needed at this location to provide adequate  
27 service.  
28 5. *RF Emissions.* The RF emissions from the proposed facility will comply with the FCC  
29 regulations concerning emissions.  
30

- 1 6. *Alternatives.* There are no alternative locations that would provide the coverage needed.  
2 Locations considered were either too far away or too low in elevation to provide the  
3 service.  
4
- 5 7. *Property Values.* There were complaints from nearby homeowners that the proposed  
6 monopole would adversely affect their property values. To the extent that such concerns  
7 are based on asserted health risks, the evidence may not be considered. There was no  
8 appraisal testimony to support the effects of RF emissions on property values.  
9
- 10 8. *Peer Review.* The City submitted the application to an independent radio frequency  
11 engineer and requested peer review of applicant's proposal. It was his conclusion that  
12 applicant's consultant properly conducted the study and that the frequency strength  
13 necessary to secure proper service at this location required a pole 63.5 feet in height with  
14 antenna with one or more carriers extending up to 71 feet. Applicant is seeking approval  
15 of a pole and antennae to a maximum of only 64 feet.  
16
- 17 9. *Public Input.* Numerous members of the public residing near the site expressed  
18 opposition to the proposal. Neelesh Kamkolkar, 13945 NE Redmond Way, had concerns  
19 about health risks from radio frequency emissions, and the effect of these fears on  
20 prospective purchasers of homes in the area. He urged an alternate location. Yuri Alkin,  
21 8420 143<sup>rd</sup> Ct NE, also expressed health concerns and the effect of the monopole on  
22 property values. He presented a petition from neighbors opposing the pole as unneeded  
23 here. He also presented a memorandum from Henry Lai concerning health hazards of  
24 radio emissions. Johnny Baginley Jr., 13940 NE Redmond Way, was worried that the  
25 pole would be 50 feet from his bedroom. He was concerned about safety and whether  
26 alternative locations were available. He asked numerous questions such as 'why here,  
27 where do the underground wires go, why a new pole, who would benefit, will the pole  
28 block my driveway,' etc. He said that the City did not give the neighbors sufficient time  
29 to consider the application. He also said that trees would have to be taken out, and  
30 wondered what would happen if the road was widened. He asked for proof of

1 complaints of poor service, and urged an alternate location. Paul Smith, 13929 NE  
2 Redmond Way, expressed concern about the effect of the pole on his desire to sell his  
3 home. Traffic is a problem. Sharon Nakamura, 4930 26<sup>th</sup> South, a Seattle resident, felt  
4 that the City should not burden homeowners with this facility, as it was a commercial  
5 intrusion. Andy Teng, 14203 NE 86<sup>th</sup> Place, spoke on behalf of his neighbor, Chris  
6 Wang. He is a T-Mobile customer and had no problem with his service. Marc Quintal,  
7 13939 NE Redmond Way, reiterated the concerns about an alternate area, health hazards,  
8 and effect on property values. Christine Chen, 8428 143<sup>rd</sup> Ct NE, agreed with the prior  
9 speakers and was anxious about health. Ron Mebust, 8225 140<sup>th</sup> Avenue NE, was  
10 concerned about getting “zapped” if he was on his roof. He urged a study on safety on the  
11 monopole and it’s antenna. Akila Ramani, 14116 NE 85<sup>th</sup> Ct, was a concerned mother of  
12 children and suggested relocating the pole across the street on the detention pond. Anna  
13 Dayen, 8420 143<sup>rd</sup> Ct NE, expressed health concerns and did not think this pole would be  
14 much of an improvement. Neelesh Kamolkar, 13945 NE Redmond Way, demonstrated  
15 the interference that a cell phone makes to a radio receiver. He reported that T-Mobile’s  
16 sales personnel told him that coverage was good in this area. Anna Dayen, 8420 143<sup>rd</sup> Ct  
17 NE, said that T-Mobile told her that it had excellent coverage in the area. Dave Gann,  
18 14106 NE 84<sup>th</sup> Street, a T-Mobile customer, agreed with Ms. Dayen. He had good  
19 coverage he said.

20  
21 10. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.  
22

### 23 CONCLUSIONS OF LAW

- 24  
25 1. *Jurisdiction*. An application for a Conditional Use Permit requires a Type IV review  
26 procedure. It is a quasi-judicial proceeding in which the City Council makes a final  
27 decision after a public hearing and recommendation from the Hearing Examiner. RCDG  
28 20F.30.45.  
29  
30 2. *Criteria for Approval*. The criteria for approval of a telecommunications facility in a  
right-of-way and in a residential area are extensive. First, applicant is subject to the

City's standards for construction in the right-of-way. A street use permit and franchise agreement from the City is required. The aerial services to the existing utility pole must be placed underground across NE Redmond Way and to the existing house.

Next, the proposal must satisfy the special use criteria that govern telecommunications facilities (RCDG 20D.170.45). The proposed height of the pole and antenna (64 feet) are within the height limits, **so it need not satisfy the essential public facilities criteria.** (TCR 5-6) **However, because** it is in a low-moderate zone, it must **also** satisfy the special exception criteria. RCDG 20D.170.45-080. This requires applicant to demonstrate that its inability to receive a communication signal is a result of factors beyond its control, and that it has used materials, shapes, and colors for the facility to minimize negative visual impacts. Staff discussion is at pages 6-7 of the TCR, and it concludes that these criteria are satisfied.

~~**Where a tower exceeds height limits, it must use the essential public facilities process for site and height approval. This allows consideration of more than one alternative site, may require consideration of sites outside the City, and requires and amplified public involvement process. RCDG 20F40.80-050. Staff discussion at pages 7-10 concludes that applicant has met the requirements of this process.**~~

Finally, the general siting criteria for broadcast and relay towers provide that such facilities are most appropriate in industrial, manufacturing, business and commercial zones, in that order, before being located in residential zones. Staff concluded (page 10, TCR) that Applicant had demonstrated that the coverage gap could not be **covered** **filled** by location of the facility in any zone other than a residential zone.

3. Mobile telecommunication facilities are regulated by federal law in 47 USC 332. Subsection (c)7 of that provision deals with local zoning authority. It provides that:



1           *Except as provided in this paragraph, nothing in this chapter shall limit or affect*  
2           *the authority of a State or local government or instrumentality thereof over*  
3           *decisions regarding the placement, construction, and modification of personal*  
4           *wireless service facilities.*

5  
6           Local government must not unreasonably discriminate among providers of functionally  
7           equivalent services or prohibit or have the effect of prohibiting the provision of personal  
8           wireless services. It shall act on a request for authorization to place, construct or modify  
9           personal wireless service facilities within a reasonable time, and any decision to deny  
10          such a request shall be in writing and supported by substantial evidence contained in a  
11          written record. Finally, **the federal Act provides:**

12  
13           *No State or local government or instrumentality thereof may regulate the*  
14           *placement, construction, and modification of personal wireless service facilities*  
15           *on the basis of the environmental effects of radio frequency emissions to the*  
16           *extent that such facilities comply with the Commission's regulations concerning*  
17           *such emissions.*

18  
19          4. The Hearing Examiner granted the City staff an additional two weeks to review their  
20          conclusions in light of questions raised by members of the public. Staff was convinced  
21          that Applicant may not have adequately demonstrated that a monopole was needed at  
22          this location to provide adequate coverage. As a result of its additional review, City staff  
23          concluded that Applicant had not adequately shown that the monopole “absolutely  
24          necessary” in this location to meet the demands of its users. They asked that Applicant  
25          be required to provide RF reports, drive tests, a list or summary of complaints, proof of  
26          percentage of dropped calls and other evidence to show a need for the pole from the  
27          users as well as the carrier’s perspective.

28  
29          5. Applicant’s responded that the criteria for location of the monopole did not require a  
30          showing of “absolute necessity”, that staff had ignored the favorable peer review which

1 the City itself had required and paid for, that health claims were unfounded and could  
2 not be used to regulate the location of the facility if FCC emission standards were met,  
3 and that it had made a compelling case that a facility was needed within the vicinity of  
4 this location to serve a major dead spot in its coverage.

- 5
- 6 6. The concerns of residents of this area were based mainly upon perceived health risks  
7 from RF radiation. The antennae on the pole here will be from 61 to 64 feet in the air,  
8 and emissions will be directed laterally, not downward. The power of the transmitter  
9 will be within the FCC regulations, and will provide not health risk to the public or to  
10 nearby residents. **The City cannot deny the permit on this basis.**
- 11

12 Some of the opponents made telephone calls to T-Mobile sales personnel, who advised  
13 them that coverage in the area was “good”. These personnel cannot be expected to  
14 provide definitive information as to whether there are gaps in coverage which require  
15 expensive additional facilities. One would not expect a sales representative to advise a  
16 potential customer that the company’s coverage was lacking in any way. This is an area  
17 reserved for technical staff, who testified under oath at the hearing that there are  
18 significant gaps in coverage along NE Redmond Road.

19

- 20 7. The Hearing Examiner is convinced that Applicant has satisfied the multiple criteria for  
21 location of this monopole, and that staff’s requests for additional information are either  
22 excessive or redundant. It is the Hearing Examiner view that the Technical Committee  
23 Report correctly assessed the facts and law in the matter in its’ report, and that its’  
24 conclusion that the Conditional Use Permit should be granted is correct.
- 25

- 26 8. Any finding of fact deemed to be a conclusion of law is adopted as such.
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- 28
- 29
- 30

**RECOMMENDATION**

The Hearing Examiner **RECOMMENDS** that the application of T-Mobile for a Conditional Use Permit to construct a **64**-foot monopole on the NW corner of NE Redmond Way and 140<sup>th</sup> Avenue NE be **APPROVED**, with conditions as set forth in Attachment A.

Dated this 18<sup>TH</sup> day of June 2003.

/s/ Gordon F. Crandall

**GORDON F. CRANDALL**  
**HEARING EXAMINER**

Attachment A: Conditions of Approval